IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 93 of 1985

For Approval and Signature:

Hon'ble CHIEF JUSTICE MR DM DHARMADHIKARI
and
Hon'ble MR.JUSTICE A.R.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

1 to 5 No

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COMMISSIONER OF INCOME-TAX

Versus

GUJARAT STATE FINANCIAL CORPN.

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Appearance:

MR AKIL QURESHI for MR MANISH R BHATT for Petitioner

SERVED BY RPAD - (N) for Respondent No. 1

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CORAM : CHIEF JUSTICE MR DM DHARMADHIKARI
and
MR.JUSTICE A.R.DAVE

Date of decision: 07/09/2000

ORAL JUDGEMENT

(per D.M. Dharmadhikari, C.J.)

At the instance of the department, the following two questions, which are somewhat overlapping, have been referred to this Court under sec. 256(1) of the Income-tax Act, 1961, arising from two reference applications in the case of the assessee, Gujarat State Financial Corporation, Ahmedabad, which is a financial institution, for the Assessment Years 1978-79 and 1979-80.

"1. Whether, on the facts and in the circumstances of the case, the Appellate Tribunal has been right in law in upholding the action of the Commissioner of Income-tax (Appeals) in respect of the deduction available under section 36(1)(viii) of the Income-tax Act, 1961?

2. Whether, on the facts and in the circumstances of the case, the Appellate Tribunal has been right in law in holding that the relief under section 36(1)(viii) of the Income-tax Act, 1961 should be worked out on the basis of 40% of the total income before deduction under Chapter VIA?"

2. Learned Counsel appearing for the department points out that the questions referred are squarely covered in the case of the same assessee in (1994) 210 ITR 698 where an earlier decision in the case of the same assessee reported in (1992) 196 ITR 822 was relied and the Court answered the question in favour of the assessee thus :

"The opening part of section 2 of the Income-tax Act, 1961, which contains various definitions clearly provides that, unless the context otherwise requires, different words and expressions will have the meanings given in that section. It is not possible to read the expression "total income" used in section 36(1)(viii) to mean total income computed in accordance with the provisions contained in sections 30 to 43A, as provided in section 29, so as also to take into account deductions admissible under section 36(1)(viii). Since section 36(1)(viii) itself provides that the

> total income for the purpose of the said provision is total income before the deductions under Chapter VI-A, it would mean that, for the purpose of working out deduction under that provision, the total income would be the total income before deductions (1) under Chapter VI-A, and (2) under that provision (section 36(1)(viii)). What was implicit in section 36(1)(viii) has now been made explicit by the subsequent amendment of the said clause (viii) with effect from April 1, 1985."

3. Our attention is also invited to the decision of the Supreme Court in CIT v. Kerala State Industrial Development Corporation, (1998) 233 ITR 197. The Supreme Court in the said case, after considering decisions of several High Courts on the same subject, upheld the view of the Kerala High Court holding that "in computing the total income for the purpose of sec. 36(1)(viii) of the Act, the total income has to be computed in accordance with the provisions of sec. 30 to 43A except sec. 36(1)(viii)." The Supreme Court also has taken note of the fact that the interpretation of unamended provision finds support from the subsequent amendment brought to the section. The subsequent amendment makes it clear that the benefit of deduction of 40% to the financial institutions has to be worked out on the total income excluding other deductions.

4. Consequently, respectfully relying on the earlier decision of this Court and the decision of the Supreme Court in Kerala State Industrial Development Corporation (supra), we answer the two questions in favour of the assessee and against the revenue.

The reference stands disposed of. There shall be no order as to costs.

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(D.M. Dharmadhikari, C.J.)

(A.R. Dave, J.)

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